

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

ALTON HIGGINS,

Petitioner,

Case Number: 02-10124-BC  
Honorable David M. Lawson

v.

PAUL RENICO,

Respondent.

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**ORDER GRANTING RESPONDENT'S MOTION  
FOR STAY PENDING APPEAL**

This matter is before the Court on the respondent's motion for a stay of this Court's judgment conditionally granting the petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and requiring the state to either release the petitioner from custody or retry him within a period of seventy days. The respondent states that a stay is warranted because it has timely filed a notice of appeal, and it would be an unreasonable use of resources to require retrial while the matter is pending on appeal. The respondent further asserts that this Court may delay the release of the petitioner in order to provide the State an opportunity to correct the constitutional violation. The petitioner has filed a response in opposition.

In *Hilton v. Braunskill*, 481 U.S. 770 (1987), the Supreme Court set forth a four factor test to determine whether a successful habeas petitioner should be released during the period in which the State's appeal is pending. Those factors include: "(1) whether the stay applicant has made a showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparable injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton*, 481 U.S. at 776.

The respondent maintains that there is a strong public interest involved because the crime involved the violent shooting death of the victim during the illegal sale of a firearm; the petitioner presents a substantial flight risk and is unlikely to return to serve his life sentence should his conviction be reinstated; the state has a strong interest in continued custody while the appeal is pending; and there is a strongly likelihood the State will prevail on the merits. After considering the parties's submissions, the Court concludes that the State has not made a showing of likely success on the merits under the first factor of the *Hilton* test. However, the Court finds that the balance of the factors weighs in favor of continued custody. The Court will therefore grant the stay.

Accordingly, it is **ORDERED** that the respondent's motion for stay pending appeal [dkt # 30] is **GRANTED**. If unsuccessful, the respondent shall retry the petitioner within seventy days from the date of the final order denying the appeal subject to the exclusions from such period allowed by 18 U.S.C. § 3161(h) or release the petitioner from custody.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: May 16, 2005

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 16, 2005.

s/Tracy A. Jacobs  
TRACY A. JACOBS